

## **REMARKS**

### **Amendments to the Claims**

To expedite prosecution, applicants have presented one amended independent claim which is supported throughout the specification, and in particular in the original claims. Specifically, amended claim 30 is directed at a method of preserving cut flowers by coating the cut flowers with a latex-containing aqueous composition.

Applicant's invention is based on the unexpected finding that coating an *entire* cut plant with a nutrient/protectant allows enough of the nutrient/protectant to still be absorbed by the cut plant as described in paragraph [0027]. It goes against conventional wisdom to spray these substances on cut plants, because their usefulness depends on their ability to be effectively metabolized, and metabolism by cut plants is significantly limited when compared to live, actively growing plants. Indeed, the growth and metabolism of cut plants is minimal compared to live plants, so it was unexpected that these substances would have any measurable effect.

### **Rejection Under 35 U.S.C. §103(a) Over Pommer**

Claims 1-2, 4-7 and 9-37 were previously rejected as obvious over Pommer (U.S. Patent No. 4,863,734.) In the present Office Action, the Examiner has maintained these rejections.

- a. Determination of the scope and content of the prior art (MPEP 2141.01)

The Examiner credits Pommer as teaching a process for combating fungi in agriculture. *This is an entirely different field as the presently claimed method.* Whereas Pommer concerns a therapeutic treatment to rid live plants from fungal infections, the presently claimed method concerns an aesthetic treatment to maintain the appearance of cut plants.

- b. Ascertainment of the difference between the prior art and the claims (MPEP 2141.02)

The Examiner has correctly noted that Pommer does not teach a formulation of maintaining or prolonging the appearance of a floral or foliage display comprising latex, a nutrient/protectant and water.

c. Finding of prima facie obviousness Rational and Motivation (MPEP 2141-2143)

The Examiner concludes that it would be obvious to make the claimed formulations based on Pommer, because of the following:

“Pommer et al do not teach the composition being applied to cut plants, however, one of ordinary skill would be motivated to apply the composition to cut plants with a reasonable expectation of success because Pommer et al. suggest the composition being applied to plants.”

Applicant respectfully asserts that this is not the correct standard to be applied in support of this obviousness rejection. First, *Pommer is in an entirely different field than the presently claimed invention*. There would be no motivation to use Pommer’s anti-fungal composition for Applicants’ aesthetic-maintaining use. In addition, the Examiner reasons that the claimed invention is prima facie obvious because “the prior art is fairly suggestive.” This statement does not support a finding of prima facie obviousness since it is not sufficient that the prior art is *fairly suggestive*, and there is simply nothing in the prior art that even hints at the solution to Applicant’s problem, which was how to keep cut plants looking fresh – a vast difference from Pommer’s problem of how to prevent fungal infections from killing live plants.

More importantly, claim 30 as amended herein recites a method used to maintain or prolong the appearance of cut plants, not live plants. Thus, the difference between Applicant’s claimed invention recited in claim 30 does not describe the same method steps as Pommer.

d. Response to Arguments

The Examiner reasons that Applicant’s arguments filed on November 23, 2007, were not persuasive. In particular, the Examiner states that it would have been obvious to use the composition taught by Pommer. In support of this contention, the Examiner admits that Pommer discloses “a myriad of active ingredients with various optional functions.”

This supports Applicant's assertion that Applicant's claimed composition is not suggested by Pommer, because there is no teaching, motivation or suggestion in Pommer to select Applicant's composition from the myriad of active ingredients taught therein.

It is simply not enough that Applicant's composition can be found by selecting from the hundreds of ingredients disclosed over many pages in Pommer. Thus, the statement that Applicant's composition is obvious because all of Applicant's ingredients are found somewhere in Pommer is hindsight.

More importantly, Applicant's composition claims have been canceled to facilitate prosecution. And, for the reasons stated above, Pommer does not teach or suggest Applicant's claimed method.

Rejection Under 35 U.S.C. §103(a) Over Pommer in View of Smith

Claim 8 was previously rejected as obvious over Pommer (U.S. Patent No. 4,863,734) in view of Smith (U.S. Patent No. 6,133,300.) In the present Office Action, the Examiner has maintained this rejection. However, claim 8 has been canceled herein rendering this ground for rejection moot.


### SUMMARY

If the Examiner believes that it would facilitate prosecution, Applicant's attorney, Laurie A. Axford, may be contacted at (619) 230-7714, or at [laxford@gordonrees.com](mailto:laxford@gordonrees.com).

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Respectfully submitted,

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